

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
COMMCO, L.L.C.)	
)	FCC File Nos. 9505525, 9505566
Applications for Authority to Establish New Point-)	
to-Point Microwave Facilities in the 38.6-40.0)	
GHz Frequency Band at Daytona Beach, FL, and)	
Melbourne, FL)	

MEMORANDUM OPINION AND ORDER

Adopted: April 19, 2000

Released: May 4, 2000

Before the Commission:

1. The Commission has before it two Applications for Review filed by Commco, L.L.C. (Commco) on February 11, 2000. Commco requests reconsideration of two letter rulings from the Wireless Telecommunications Bureau, Public Safety and Private Wireless Division, Licensing and Technical Analysis Branch (Branch), dated January 12, 2000. The Branch's letters dismissed the above-captioned applications for authorization to provide service in the 38.6 to 40.0 GHz (39 GHz) band.

2. We have analyzed the Application for Review and find that the Commission staff properly decided the matters raised. The Commission has established and affirmed a processing policy concerning 39 GHz channels that includes the dismissal of (a) applications that failed to meet the thirty-day public notice requirement as of November 13, 1995; (b) all new applications, major modification applications, and amendments filed on or after November 13, 1995; and (c) applications whose mutual exclusivity was not resolved by December 15, 1995, and amendments resolving mutual exclusivity that were filed on or after December 15, 1995.¹ In addition, the Commission's Rules provide for the dismissal of mutually exclusive applications and late-filed competing applications.² Therefore, we uphold the staff decision for the reasons stated therein. There is no reason to disturb it.

3. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i) and 5(c)(5) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 155(c)(5), and Section 1.115(g) of the

¹ See Amendment of the Commission's Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Bands, *Report and Order and Second Notice of Proposed Rulemaking*, ET Docket No. 95-183, 12 FCC Rcd 18600, 18639-45 ¶¶ 83-97 (1997); *aff'd* Amendment of the Commission's Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Bands, *Memorandum Opinion and Order*, 14 FCC Rcd 12428, 12440-51 ¶¶ 19-44 (1999).

² See 47 C.F.R. § 21.31 (b)(2)(i) (1995); 47 C.F.R. § 101.45(b)(2)(i) (disposition of mutually exclusive applications). See also 47 C.F.R. § 1.934 (dismissal of defective applications).

Commission's Rules, 47 C.F.R. § 1.115, the Applications for Review filed by Commco on February 11, 2000, ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary